

STATEMENT OF
STANLEY SPURKIN
GENERAL COUNSEL
CENTRAL INTELLIGENCE AGENCY
BEFORE THE
PERMANENT SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"FORMER SPOUSES"
MARCH 30, 1982

MR. CHAIRMAN AND MEMBERS OF THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE, I AM HAPPY TO APPEAR BEFORE YOU TODAY TO DISCUSS WITH YOU THE SUBJECT OF THE AGENCY'S EFFORTS TO ASSIST FORMER SPOUSES OF AGENCY EMPLOYEES. THIS IS SOMEWHAT OF AN UNUSUAL ROLE FOR ME SINCE, AS A LAWYER, I AM USED TO SITTING NEXT TO THE WITNESS CHAIR, NOT IN IT. I HAVE COME HERE TODAY AS THE AGENCY'S REPRESENTATIVE, THOUGH, BECAUSE MANY OF THE ISSUES OF CONCERN TO YOU FALL WITHIN THE AREA OF MY RESPONSIBILITY AS GENERAL COUNSEL, AND BECAUSE I UNDERSTAND THAT THE COMMITTEE IS CONSIDERING THE POSSIBILITY OF LEGISLATIVE SOLUTIONS TO SOME PERCEIVED PROBLEMS. ACCORDINGLY, I WILL DO MY BEST TO OUTLINE THE AGENCY'S EFFORTS IN THIS AREA AND TO ANSWER ANY QUESTIONS YOU MAY HAVE.

LET ME BEGIN BY SAYING THAT THE AGENCY AND I RESPECT AND ADMIRE THE INDIVIDUALS WHO HAVE BEEN DISCUSSING ISSUES RELATED TO FORMER SPOUSES WITH COMMITTEE MEMBERS AND STAFF, AND THOSE WHOSE EXPERIENCES HAVE BEEN PRESENTED TO THE COMMITTEE. I THINK WE ARE HERE TODAY NOT TO TAKE SIDES ON ANY PARTICULAR ISSUE BUT RATHER TO EXPLORE PROBLEMS FACING INDIVIDUALS IN CERTAIN CIRCUMSTANCES AND TO TRY TO WORK OUT REASONABLE AND RESPONSIBLE SOLUTIONS.

MR. CHAIRMAN, IN RESPONDING TO THE ISSUES RAISED BY THE QUESTIONS IN THE COMMITTEE'S LETTER ASKING US TO APPEAR HERE TODAY, I WOULD LIKE TO ADDRESS TWO KEY AREAS. THE FIRST IS WHAT THE AGENCY DOES WHEN AN AGENCY EMPLOYEE IS FACING A DIVORCE. THE SECOND INVOLVES THE ABILITY OF SPOUSES TO HAVE AN AGENCY EMPLOYEE'S RETIREMENT BENEFITS FIGURE IN ANY APPORTIONMENT OF PROPERTY WHICH MAY ACCOMPANY A DIVORCE.

WHEN WE ARE DEALING WITH THE DIVORCE OF ANY AGENCY EMPLOYEE, WE ARE DEALING WITH A VERY DIFFICULT SITUATION WHICH, UNFORTUNATELY, HAS BECOME ALL TOO COMMON IN RECENT YEARS. THE AGENCY, THROUGH MY OFFICE, FIRST BECOMES OFFICIALLY AWARE OF AN

IMPENDING DIVORCE THROUGH THE OPERATION OF AGENCY REGULATIONS WHICH REQUIRE AGENCY EMPLOYEES TO NOTIFY THE OFFICE OF GENERAL COUNSEL WHENEVER THEY MAY BECOME INVOLVED IN COURT PROCEEDINGS IN WHICH THE AGENCY OR AGENCY INTERESTS MIGHT BECOME AFFECTED. THE PURPOSE OF THIS NOTICE, AND MAY I SAY OF ALL AGENCY INVOLVEMENT IN THIS AREA, IS NOT TO FRUSTRATE THE WILL OF ANY PARTY, NOR TO ADVANCE OR IMPEDE EITHER SIDE'S CASE. THE ONLY AGENCY INTEREST IS TO INSURE THAT CLASSIFIED INFORMATION IS NOT PUT ON THE PUBLIC RECORD OR DISSEMINATED IN ANY UNAUTHORIZED FASHION.

MOST DIVORCES WHICH OCCUR NOWADAYS DO NOT, IN ANY EVENT, GO TO LITIGATION IN THE COURTS. INSTEAD, THEY ARE HANDLED BY A SETTLEMENT AGREEMENT WORKED OUT BY THE PARTIES AND APPROVED BY THE COURT OR, AT MOST, BY MEANS OF AN INFORMAL HEARING BEFORE A MASTER. IF IT IS DETERMINED THAT CLASSIFIED INFORMATION WILL NOT BE AN ISSUE IN THE DIVORCE, THEN THE PARTIES PROCEED WITHOUT FURTHER INVOLVEMENT BY THE AGENCY. THIS IS THE VAST MAJORITY OF SUCH CASES. IF, HOWEVER, IT APPEARS THAT CLASSIFIED INFORMATION WILL BE AN ISSUE, THE OFFICE OF GENERAL COUNSEL WILL TAKE THE NECESSARY STEPS TO INSURE THAT ANY SUCH INFORMATION IS HANDLED IN AN APPROPRIATE FASHION. FOR THE MOST PART, THESE ARE CASES WHERE THE AGENCY EMPLOYEE IS SERVING UNDER COVER.

UPON REQUEST, THE AGENCY WILL FURNISH THE AGENCY EMPLOYEE AND THE NON-AGENCY EMPLOYEE SPOUSE A LIST OF CLEARED ATTORNEYS FROM WHICH THEY CAN SELECT AN ATTORNEY TO REPRESENT THEM. I MUST EMPHASIZE, HOWEVER, THAT NEITHER SIDE IS FORCED TO CHOOSE AN ATTORNEY FROM THIS LIST. THE LIST IS NOT EXTENSIVE, AND IT CERTAINLY DOES NOT INCLUDE DIVORCE SPECIALISTS IN EVERY LOCAL JURISDICTION. THE LIST IS MAINTAINED BY MY OFFICE MERELY AS A CONVENIENCE TO EMPLOYEES WHO DO NOT WISH TO SEARCH OUT AN ATTORNEY. AT THE REQUEST OF A PARTY, THE AGENCY ROUTINELY WILL CLEAR AN ATTORNEY SELECTED BY THAT PARTY.

ONCE THIS OCCURS, THE PARTIES, THROUGH THEIR ATTORNEYS, CAN USUALLY WORK TOGETHER TO INSURE THAT CLASSIFIED INFORMATION DOES NOT BECOME AN ISSUE AND DOES NOT GO ONTO THE PUBLIC RECORD. IF, HOWEVER, CLASSIFIED INFORMATION WILL BECOME AN ISSUE BECAUSE, FOR EXAMPLE, IT IS ALLEGED THAT THE EMPLOYEE'S CLASSIFIED DUTIES CONTRIBUTED TO THE MARITAL PROBLEMS, MY OFFICE WILL WORK WITH THE PARTIES TO INSURE THAT THE INFORMATION IS MADE AVAILABLE TO THE JUDICIAL OFFICER HEARING THE CASE IN SUCH A WAY THAT HE CAN CONSIDER IT IN HIS DECISION WITHOUT IT GOING ONTO THE PUBLIC RECORD OR BEING DISSEMINATED IN AN UNAUTHORIZED FASHION. FOR EXAMPLE, THE AGENCY WILL SHOW BOTH SIDES AND THE JUDICIAL OFFICER COPIES OF THE EMPLOYEE'S TRUE SALARY RECORDS AND WILL FURNISH SANITIZED COPIES FOR THE RECORD. THE AGENCY WILL ALSO WORK WITH THE PARTIES USING SUCH TOOLS AS SEALING OF THE RECORD AND IN CAMERA REVIEWS WHERE NECESSARY TO PRESERVE SECRECY. I BELIEVE THAT THIS SYSTEM HAS WORKED QUITE WELL, CERTAINLY DURING MY TENURE AS GENERAL COUNSEL. I WOULD LIKE TO REITERATE THAT THE GENERAL COUNSEL'S OFFICE DOES NOT REPRESENT EITHER SIDE IN A DIVORCE; IT IS ONLY INVOLVED TO ASSURE THE PROTECTION OF AGENCY INTERESTS, AND THERE IS NO CONFLICT BETWEEN THIS GOAL AND THE RIGHTS OF EITHER OF THE PARTIES.

I WOULD LIKE TO EMPHASIZE AT THIS POINT THAT THE AGENCY RECOGNIZES THE IMPORTANCE OF ASSISTING THE AGENCY SPOUSE AND THE AGENCY FAMILY IN DEALING WITH THE DIFFICULTIES OF LIFE OVERSEAS WHICH OFTEN CONTRIBUTE TO MARITAL TENSIONS. THE AGENCY'S FAMILY AND EMPLOYEE LIAISON UNIT SERVES TO ASSIST FAMILIES ASSIGNED OVERSEAS TO ADJUST TO ALL ASPECTS OF OVERSEAS LIFE. THE UNIT ATTEMPTS TO MAKE AVAILABLE TO THE FAMILY THE LATEST INFORMATION ON LIFE AT OVERSEAS POSTS INCLUDING EDUCATIONAL AND EMPLOYMENT OPPORTUNITIES. IT

WORKS CLOSELY WITH THE FAMILY TO INSURE THAT THE TRANSITION FROM LIFE IN THE UNITED STATES TO LIFE OVERSEAS (AND VICE VERSA) IS A SMOOTH ONE. HOPEFULLY, THROUGH ITS WORK THE UNIT WILL LESSEN THE STRAINS ON MARITAL LIFE OVERSEAS.

MR. CHAIRMAN, AS YOU MAY KNOW, THE INTELLIGENCE COMMITTEE IN THE SENATE HAS ALSO BEEN INTERESTED IN MANY OF THE ISSUES WHICH WE ARE DISCUSSING HERE TODAY. I WOULD LIKE TO NOTE THAT I RECENTLY MET WITH THE SENATE COMMITTEE'S CHIEF COUNSEL, VICTORIA TOENSING, ALONG WITH MS. VILLEMARETTE AND MS. WILLIAM COLBY, WIFE OF FORMER DIRECTOR WILLIAM COLBY. AS A RESULT OF THIS MEETING THE AGENCY HAS ESTABLISHED A TASK FORCE CONSISTING OF REPRESENTATIVES FROM MY OFFICE, THE OFFICE OF PERSONNEL, THE DIRECTORATE OF OPERATIONS AND OTHER AGENCY COMPONENTS. THE CHARTER OF THIS TASK FORCE IS TO LISTEN TO THE VIEWS OF FORMER AGENCY SPOUSES, AS WELL AS CURRENT AGENCY EMPLOYEES AND THEIR SPOUSES; TO REVIEW CURRENT AGENCY PRACTICE IN THE FAMILY RELATIONS AREA; AND TO DEVELOP SPECIFIC RECOMMENDATIONS FOR NECESSARY CHANGES. THE TASK FORCE ALSO WILL BE LOOKING INTO THE AREA OF TRAINING FOR SPOUSES ACCOMPANYING THEIR HUSBANDS OVERSEAS, AND EMPLOYMENT OPPORTUNITIES FOR SPOUSES. THE TASK FORCE'S CHARTER ALSO INCLUDES A DIRECTIVE TO DEVELOP WAYS TO ENSURE THAT AGENCY PERSONNEL AND THEIR SPOUSES ARE FULLY AWARE OF AGENCY RESOURCES AND PROCEDURES, ESPECIALLY IN CONNECTION WITH DIVORCE PROCEEDINGS.

I WOULD NOW LIKE TO TURN TO THE SUBJECT OF FORMER SPOUSES AND THEIR ABILITY TO OBTAIN AN APPROPRIATE SHARE OF AN AGENCY EMPLOYEE'S RETIREMENT BENEFITS AFTER THE BREAKUP OF A MARRIAGE. I THINK THAT IT IS PARTICULARLY

IMPORTANT THAT WE REVIEW THE HISTORY OF THE LAW IN THIS AREA BEFORE DISCUSSING ANY PARTICULAR NEW LEGISLATIVE PROPOSALS.

UNTIL 1978, SPOUSES OF GOVERNMENT EMPLOYEES WERE NOT ABLE TO OBTAIN DIRECT PAYMENT OF A SHARE OF THE EMPLOYEE'S CIVIL SERVICE RETIREMENT BENEFITS IN A DIVORCE PROCEEDING. SUCH PAYMENTS WERE BARRED BECAUSE PAYMENTS UNDER THE CIVIL SERVICE RETIREMENT SYSTEM WERE NOT SUBJECT TO STATE LEGAL PROCESS. THIS SITUATION WAS CHANGED WITH THE ENACTMENT OF P.L. 95-366 IN 1978. P.L. 95-366 REMOVED THE BAR BY PROVIDING THAT CIVIL SERVICE ANNUITIES COULD BE PAID DIRECTLY TO A FORMER SPOUSE PURSUANT TO A STATE COURT DIVORCE DECREE OR COURT-APPROVED PROPERTY SETTLEMENT.

WITH THE ENACTMENT OF PUBLIC LAW 95-366, THE AGENCY HAD ITS PROVISIONS MADE A PART OF THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM (CIARDS). AS YOU KNOW, THE CIARDS STATUTE PERMITS THE PRESIDENT, BY EXECUTIVE ORDER, TO CONFORM CIARDS TO CHANGES MADE IN THE CIVIL SERVICE RETIREMENT SYSTEM. THIS FEATURE OF CIARDS REFLECTS THE FACT THAT CIARDS IS CLOSELY MODELED ON THE CIVIL SERVICE SYSTEM. ON MARCH 5, 1980, FORMER PRESIDENT CARTER SIGNED EXECUTIVE ORDER 12197 WHICH ADDED TO CIARDS THE PROVISIONS WHICH HAD BEEN ADDED TO THE CIVIL SERVICE SYSTEM BY P.L. 95-366. WITH THE ENACTMENT OF PUBLIC LAW 95-366 AND THE ADOPTION OF EXECUTIVE ORDER 12197, I BELIEVE THAT THE FUNDAMENTAL PROBLEM WAS OVERCOME. ALL CIA SPOUSES, WHETHER THE EMPLOYEE SPOUSE IS IN THE CIVIL SERVICE SYSTEM OR CIARDS, WERE ACCORDED THE OPPORTUNITY TO OBTAIN A SHARE OF THE EMPLOYEE'S RETIREMENT BENEFITS IN ANY DIVORCE PROCEEDING.

ENACTMENT OF THE FOREIGN SERVICE ACT OF 1980 ESTABLISHED A SYSTEM WHEREBY THE FORMER SPOUSE OF A FOREIGN SERVICE OFFICER IS ENTITLED TO A PRO RATA SHARE OF THE OFFICER'S RETIREMENT BENEFITS, UNLESS OTHERWISE PROVIDED BY ORDER OF A DIVORCE COURT OR A PROPERTY SETTLEMENT AGREEMENT. IN EFFECT, SECTION 814 OF

THE ACT SAYS TO THE PARTIES, IF YOU MEET CERTAIN CONDITIONS AS TO LENGTH OF SERVICE AND LENGTH OF MARRIAGE, THEN THE EMPLOYEE'S RETIREMENT BENEFITS WILL BE DIVIDED ACCORDING TO A SET PERCENTAGE UNLESS YOU, BY SETTLEMENT AGREEMENT, OR THE COURTS IN THE CONTEXT OF A JUDICIAL PROCEEDING, DECIDE OTHERWISE.

THAT BRINGS US DOWN TO THE QUESTION OF WHETHER THERE SHOULD BE LEGISLATION TO AMEND THE CIARDS SYSTEM SO AS TO HAVE IT ADOPT THE PRESUMPTIVE, PRO RATA DIVISION PROVISIONS OF THE FOREIGN SERVICE SYSTEM.

LET ME NOTE SEVERAL POINTS THAT THE COMMITTEE MIGHT WISH TO CONSIDER IN ITS EXAMINATION OF THIS QUESTION. IT HAS BEEN ARGUED THAT CIARDS SHOULD HAVE THE PRO RATA SYSTEM BECAUSE THE FOREIGN SERVICE DOES. THE EFFECTIVE DATE OF THE RELEVANT PROVISIONS IN THE FOREIGN SERVICE ACT WAS FEBRUARY 15, 1981, AND THERE DOES NOT AS YET APPEAR TO HAVE BEEN EXTENSIVE EXPERIENCE UNDER THE NEW PROVISIONS. A REVIEW OF THE OPERATION OF THE FOREIGN SERVICE AND THE CIVIL SERVICE/CIARDS SYSTEMS IN THIS AREA WOULD BE HELPFUL.

MR. CHAIRMAN, WE ALL ARE IN AGREEMENT THAT CIA SPOUSES OVERSEAS MAKE SIGNIFICANT CONTRIBUTIONS TO THEIR COUNTRY AS WELL AS TO THEIR FAMILIES. ENACTMENT OF THE FOREIGN SERVICE PROVISIONS FOR CIARDS DOES, HOWEVER, POSE CERTAIN ISSUES THAT REQUIRE CAREFUL CONSIDERATION.

CIARDS WAS ENACTED TO PROVIDE THE AGENCY WITH A TOOL TO FACILITATE THE EFFECTIVE MANAGEMENT OF ITS CADRE OF CLANDESTINE SERVICE OFFICERS. CIARDS PROVIDES FAVORABLE RETIREMENT ANNUITIES, BUT EMPLOYEES IN THE SYSTEM MUST ADHERE TO SERVICE AGREEMENTS REGARDING OVERSEAS ASSIGNMENTS AND MANDATORY RETIREMENT. THIS ENABLES THE AGENCY TO ENSURE ITS ABILITY TO FILL OVERSEAS POSTS, MAINTAIN A VIGOROUS CADRE OF OPERATIONS OFFICERS, AND PROVIDE FOR UPWARD MOBILITY.

CIARDS IS AN ELECTIVE SYSTEM. PERSONNEL QUALIFYING FOR PARTICIPATION IN THE SYSTEM MAY CHOOSE TO DO SO OR THEY MAY CHOOSE TO REMAIN IN THE CIVIL SERVICE SYSTEM. OBVIOUSLY, IT IS IN THE AGENCY'S INTEREST TO MAINTAIN THE ATTRACTIVENESS OF CIARDS IN ORDER TO ACCOMPLISH THE SYSTEM'S MANAGERIAL PURPOSES. ANY DIFFERENCE BETWEEN CIARDS AND THE CIVIL SERVICE SYSTEM PERCEIVED AS A MATERIAL DISADVANTAGE COULD BECOME A FACTOR DISTORTING THE ELECTION WHICH QUALIFYING AGENCY OFFICERS MUST MAKE BETWEEN PARTICIPATING IN CIARDS AND REMAINING IN THE CIVIL SERVICE SYSTEM.

THE IRREVOCABLE ELECTION THAT CURRENT CIARDS PARTICIPANTS HAVE MADE WITH RESPECT TO THEIR PARTICIPATION IN THE SYSTEM IS CONDITIONED UPON THE OPPORTUNITY TO MAKE ANOTHER ELECTION IN THE EVENT OF MAJOR CHANGES IN CIARDS. IT SEEMS TO ME, THAT IF THE FOREIGN SERVICE PROVISIONS ON FORMER SPOUSES WERE ENACTED FOR ALL OR EVEN SOME CIARDS PARTICIPANTS, THOSE AFFECTED WOULD HAVE TO BE GIVEN ANOTHER OPPORTUNITY TO DECIDE WHETHER THEY STILL WANTED TO PARTICIPATE IN THE SYSTEM UNDER THESE NEW CIRCUMSTANCES.

MR. CHAIRMAN, I SHOULD ALSO NOTE THAT AT THE PRESENT TIME LESS THAN A THIRD OF CIA PERSONNEL ARE PARTICIPANTS IN THE CIARDS SYSTEM. SOME PARTICIPANTS ARE IN THE SYSTEM AS A RESULT OF RECOGNITION THAT THE SPECIAL AND IMPORTANT NATURE OF THEIR INTELLIGENCE DUTIES MERITS A PREFERENTIAL RETIREMENT PROGRAM, BUT THESE DUTIES DO NOT INCLUDE OVERSEAS SERVICE, WITH ITS ACCOMPANYING IMPACT ON FAMILY LIFE. I AM SURE THAT THE COMMITTEE WOULD WANT TO CAREFULLY CONSIDER WHETHER THESE EMPLOYEES SHOULD BE GOVERNED BY PROVISIONS WHICH ARE BASED UPON THE EXPERIENCES OF FOREIGN SERVICE OFFICERS.

I BELIEVE, MR. CHAIRMAN, THAT CERTAIN OF THE PROBLEMS IN THIS AREA CAN BE REMEDIED BY ADMINISTRATIVE MEANS, AND I WOULD SUGGEST THAT THERE BE AN OPPORTUNITY FOR US TO EVALUATE THE WORK OF THE TASK FORCE WHICH I MENTIONED EARLIER. IF IT

IS ULTIMATELY DETERMINED THAT A LEGISLATIVE SOLUTION IS NEEDED, WE STAND READY TO ASSIST THE COMMITTEE IN ITS WORK.

Mr. CHAIRMAN, I THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY. I BELIEVE THAT MY STATEMENT HAS BEEN RESPONSIVE TO THE QUESTIONS WHICH WERE RAISED IN THE COMMITTEE'S LETTER ASKING US TO DISCUSS THIS ISSUE. YOU ASKED WHETHER THE OVERSEAS SERVICE OF CIA SPOUSES IS SUFFICIENTLY SIMILAR TO THAT OF FOREIGN SERVICE SPOUSES SO AS TO ENTITLE THE FORMER TO THE SAME BENEFITS AS THE LATTER. AS I EXPLAINED EARLIER, THERE IS NO QUESTION ABOUT THE CONTRIBUTION OF CIA SPOUSES, BUT ADDITIONAL CONSIDERATIONS ARE INVOLVED. YOU ALSO ASKED WHETHER THE EXTENSION OF THE FORMER SPOUSES PROVISIONS OF THE FOREIGN SERVICE SYSTEM TO CIA WOULD CAUSE ANY DAMAGE TO OUR ABILITY TO CARRY OUT OUR MISSION. IN MY TESTIMONY I DID INDICATE WHAT I BELIEVE THE CRITICAL ISSUES TO BE. WE MUST BE SURE THAT ANYTHING DONE TO OUR ELECTIVE PREFERRED RETIREMENT SYSTEM IS CLEARLY PERCEIVED AS MAINTAINING ITS PREFERENTIAL NATURE.

Mr. CHAIRMAN, I WOULD BE HAPPY, WITH THE ASSISTANCE OF THE EXPERTS I HAVE BROUGHT WITH ME, TO ANSWER ANY QUESTIONS YOU MAY HAVE.